

CCH-W-15-01

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IDAHO PUBLIC
UTILITIES COMMISSION

WATER AND SEWER SYSTEM AGREEMENT

THIS WATER AND SEWER SYSTEM AGREEMENT (this "Agreement") is made and entered into this 2nd day of March, 2015 (the "Effective Date"), by and between **Taylor Mountain Water and Sewer District**, a water and sewer district organized pursuant to Chapter 32 of Title 42 of the Idaho Code, whose address is c/o Robert L. Harris, Holden, Kidwell, Hahn & Crapo, P.L.L.C., 1000 Riverwalk Dr., Ste. 200, P.O. Box 50130, Idaho Falls, Idaho 83405 (hereinafter "District"), and **Country Club Hills Utilities, Inc.**, an Idaho corporation, whose address is P.O. Box 50220, Idaho Falls, Idaho 83405 (hereinafter "CCHU"). District and CCHU are individually a "Party" and together the "Parties".

RECITALS:

A. CCHU is an Idaho corporation formally organized in 1994 for the purpose of owning and operating a "domestic water distribution system and a domestic sewer system." *CCHU Articles of Incorporation* at Article V. The water and sewer systems are generally associated with the Idaho Falls Country Club and its surrounding residential subdivisions identified on **Exhibit 1** attached hereto.

B. CCHU has entered into a certain *Compliance Agreement Schedule Idaho Code § 39-116A* dated January 17, 2012 (hereinafter, "Compliance Agreement") with the Idaho Department of Environmental Quality ("IDEQ") concerning needed infrastructure improvements to CCHU's sewer system. As explained in CCHU's *Environmental Information Document* submission to IDEQ:

[CCHU] has entered into a Compliance Agreement with [IDEQ] to improve its wastewater facilities by January 1, 2016. Currently, CCHU treats wastewater from its system in two total containment lagoons. The lagoons are undersized and are leaking by more than what is allowed in the new wastewater rules. The result of the leaking lagoons is raw wastewater percolates into the Eastern Snake River Plain Sole Source Aquifer, thereby creating a significant hazard to public health. The Eastern Snake River Plain Aquifer is the sole source of drinking water for all of southeast Idaho, therefore it is essential work is complete[d] to eliminate potential contaminates such as the CCHU lagoons.

Eastern Idaho Regional Wastewater Authority (EIRWA) has constructed a new wastewater treatment plant in Shelley, Idaho with the capacity to treat wastewater from Shelley, Ammon, Bingham County, and Bonneville County. In addition to the treatment plant, there is also a large diameter sewer line in close proximity to Country Club Hills with the capacity to handle the additional wastewater flow from CCHU, therefore, the Recommended Alternative is to

install two miles of 12-inch sewer line and associated appurtenances in an existing paved county road to the existing Eastern Idaho Regional Wastewater Authority infrastructure, and turn over the responsibility of treating the wastewater to the Oxbow Wastewater Treatment Plant in Shelley, Idaho.

Environmental Information Document at 1-2.

C. In order to complete the Recommended Alternative described in the above paragraph, CCHU has applied for and received a low-interest loan from IDEQ in the amount of \$1,641,000.00 (the "Loan"). CCHU is proceeding through the remaining steps of the IDEQ process to receive the loan amounts and begin construction of the Recommended Alternative.

D. However, EIRWA has requested the formation of a sewer district before it will allow connection into its system because a sewer district has taxing authority. Additionally, CCHU desires to transfer ownership of the water and sewer system to another entity for operation:

As a condition of accepting and treating the wastewater from CCHU, the board of EIRWA is requiring CCHU to form a sewer district. CCHU management is currently taking steps to form the district and have hired an attorney to lead the effort. The name of the district will be the Taylor Mountain Water and Sewer District (TMWSD) and once it is formed and a Board of Directors named, the EIRWA Board will issue a "Will Serve" letter to TMWSD for their existing connections.

Environmental Information Document at 2.

E. Therefore, District has recently been formed to (1) participate in the Recommended Alternative as a condition of connecting to the EIRWA system and complying with the *Compliance Agreement*, and (2) to receive the assets of CCHU and assume operation of the water and sewer system. In order to accomplish these objections, the Parties hereby agree as follows.

AGREEMENTS

NOW, THEREFORE, for good and valuable consideration, the receipt and legal adequacy of which are hereby acknowledged, and upon the mutual covenants and agreements hereinafter provided, the Parties agree as follows:

1. Compliance Agreement. District shall work with CCHU in good faith and undertake any and all actions necessary to assist and ensure CCHU's compliance with the provisions and deadlines contained in the *Compliance Agreement* to avoid any of the potential penalties outlined in paragraph 11 of the *Compliance Agreement*. Nevertheless, District was not a party to the *Compliance Agreement*, and District assumes none of the obligations or potential penalties agreed to by CCHU in the *Compliance Agreement*. District does reserve the right to enter into another compliance agreement with IDEQ in its sole discretion.

2. Assignment of Loan and Transfer of Assets. The Parties shall undertake all necessary actions and execute all necessary documents in order to assign the Loan to the District. As part of that process, it is necessary that District own the water and sewer system (except for the sewage lagoons) in order to provide collateral to IDEQ to secure the Loan. In that regard, the Parties further agree as follows:

(a) Transfer of Water and Sewer System Assets. CCHU shall sell, convey, assign, transfer, and deliver to District, and District shall purchase or otherwise acquire from CCHU, all of CCHU's right, title, and interest in and to all of CCHU's property and assets, whether real, personal, or mixed, tangible and intangible, of every kind and description, wherever located described in **Exhibit 2** (collectively, the "Purchased Assets"), but excluding the Excluded Assets listed on **Exhibit 3**, free and clear of all liens, claims, encumbrances, security interests, and impairments of title of any kind or nature (collectively, "Liens"). To the extent any Purchased Asset by its terms cannot be sold, CCHU shall assign or otherwise transfer to District all of CCHU's rights therein, or if not assignable, sublease or sublicense such assets to District in a manner satisfactory to District.

(b) Condition of Purchased Assets. The Purchased Assets have been examined by District, and District agrees to obtain the Purchased Assets "as is."

(c) Purchase Price. There is no purchase price for the Purchased Assets.

(d) Title Insurance Policy. CCHU shall select a title company and shall secure a title commitment from said title company for the real property being transferred from CCHU to the District identified in **Exhibit 2** (excluding Water Right No. 25-7090) which CCHU shall provide to District fourteen (14) days before Closing for District's review and objection in the event a defect in title or other issue is identified. In the event there are no objections to the title commitment, at Closing, said title company shall commit to issue to and in favor of District an ALTA Standard Owner's Policy of Title Insurance issued by the title company with respect to the real property to be transferred to District insuring fee simple title to such property in District effective on the Closing Date, subject to the standard exclusions and exceptions in such form of policy and subject to any permitted exceptions. CCHU shall pay the costs for such title insurance policy for the real property to be transferred to District, along with any escrow fees and other closing costs associated with the real property.

3. Limited Assumption of Liabilities. At Closing, District shall only assume liability for the future use of the Purchased Assets by District. District shall not assume, and therefore CCHU shall retain liability and/or responsibility, for past actions and operations of CCHU and CCHU's operation of the water and sewer system (including the sewage lagoons) either currently known or not currently known to the Parties. District shall likewise not assume, and therefore CCHU shall retain liability and/or responsibility, for any currently pending litigation against CCHU, including, but not limited to, Bonneville County Case No. CV-2014-1849-OC (*Norell v. Country Club Hills Utilities, Inc., et al.*).

4. Risk of Loss. CCHU shall bear the risk of loss and repair to the Purchased Assets prior to Closing, including the cost of repair for material damage or restoration to operating condition where such damage to or cessation of operation of any of the Purchased Assets occurs

prior to Closing. District shall bear the risk of loss to the Purchased Assets from and after Closing.

5. Closing.

(a) Date and Place. Subject to and upon the terms and conditions of this Agreement, the closing of the Agreement will take place at the Idaho Falls Country Club Clubhouse on March 2, 2015 (the "Closing Date") unless the Parties otherwise agree.

(b) Delivery of Documents. At Closing, the Parties shall deliver all necessary executed documents to transfer title and/or ownership of the Purchased Assets to District.

(c) Assignment of Assessment Accounts. At Closing, CCHU shall assign all assessment accounts to the District, and thereafter, District shall have any and all rights to such assessments, including revenue received after Closing from accounts receivable (or assessments that are otherwise in arrears). In addition, District shall assess in March for utility services rendered in February by CCHU, which is consistent with CCHU's past practice, and District shall be entitled to the revenue from such assessments. From these funds, the District shall pay the February 2015 Rocky Mountain Power bill.

(d) Assessment Accounts Receivable. At Closing, CCHU shall provide an updated list of accounts receivable to CCHU incurred prior to Closing.

(e) Assignment of Accounts for Services. At or prior to Closing, CCHU shall have paid all outstanding balances incurred for services rendered for CCHU up to the Closing Date except as specified in Paragraph 5(c). At Closing, CCHU shall consent to the assignment of the accounts for such services to District's name. The District shall transfer after closing all accounts to its name.

(f) Payment of Taxes. CCHU shall pay all government and property tax notices associated with the Purchased Assets up to the Closing Date. All government and property taxes incurred after the Closing Date shall be paid by District. Payment of government and property taxes shall be pro-rated if necessary.

6. Lease of Existing Lagoons. CCHU hereby leases to the District the existing sewage lagoons and the property to which it is appurtenant from the Closing Date up until the sewer lines are connected to the EIRWA system and use of the lagoons is no longer necessary. Because the District's use of the lagoons shall be the same as it has been historically used, CCHU shall assume liability for use of the lagoon during the term of the lease. As payment for lease of the lagoons, District shall pay any and all taxes or assessments associated with the sewage lagoons and the property to which they are appurtenant. District shall also be responsible for repair and maintenance of the lagoons and lift station during the term of the lease.

7. Change Orders for Rehabilitation of Existing Lagoons. Once the existing sewage lagoons are no longer needed, they are scheduled to be rehabilitated as part of the overall project funded by the Loan (the *Environmental Impact Document* has allocated five thousand dollars (\$5,000.00) for this work) and the District will be responsible for any work that can be completed as part of the total project within the amounts available for the Loan. CCHU shall

pay for any change orders that may occur which are specifically related to rehabilitation of the lagoons that exceed the amount available under the Loan.

8. Water Rights. The only water right associated with the CCHU system is Water Right No. 25-7090, which was decreed on September 30, 2005 in the Snake River Basin Adjudication by the District Court for the Fifth Judicial District of the State of Idaho. The water right is more fully described in SRBA Decree attached hereto as **Exhibit 5**. As described in **Exhibit 5**, Water Right No. 25-7090 allows domestic use for only 65 lots, but there are currently an estimated 185 platted lots that are or will be serviced by the CCHU water and sewer systems. At Closing, CCHU shall pay five thousand dollars (\$5,000.00) to District for the anticipated costs preparing the application for water right permit, filing fees, and other costs associated with efforts by District to obtain the water right permit to cover the remaining lots (approximately 120 lots).

9. Engineering Services. CCHU and J. Freiberg Engineering, LLC have entered into certain agreements for engineering services. Nothing herein shall either obligate or prohibit District from entering into a new contract with J. Freiberg Engineering, LLC, or another engineering firm, for engineering services to complete the Recommended Alternative.

10. Representations of CCHU.

(a) Authority. CCHU represents and warrants that it is a corporation, organized and existing under Idaho law. CCHU represents that it has the power and authority to make this Agreement and to carry out the provisions hereof. The execution and delivery of this Agreement has been duly authorized by CCHU.

(b) Compliance with Agreements. CCHU warrants that it is not in breach of any agreement relating to or associated in any way with the water and sewer system.

(c) Obligations of CCHU. CCHU will execute, acknowledge and deliver to District an assignment as to any warranties and repair and maintenance agreements relating to the property and assets and other such instruments as shall be required or as may be desirable in order to effectively vest in District good, insurable, and marketable title to the assets, free and clear of all liens, encumbrances, pledges, security interests and charges.

11. Representations of District.

(a) Authority. District is duly constituted and validly existing under the law of the State of Idaho. After a majority vote of the Board of Directors of District, District has the power and authority to enter into and perform this Agreement according to its terms. Thus, the execution and performance of this Agreement has been duly authorized and approved by all necessary persons and bodies. The officer(s) executing this Agreement and all documents in connection with this Agreement are fully authorized to do so.

12. Warranties to Survive Closing. All representations and warranties made by the Parties herein are also covenants, and each Party shall take all such actions as may be required to satisfy said covenants and to cause the representations and warranties to be true on and as of the closing. The Parties' respective obligations to close and consummate the transaction

contemplated herein are contingent upon the representations, warranties and covenants contained in this Agreement being true, valid and satisfied on and as of the closing. All such representations and warranties shall survive the closing.

13. Default. Either Party's failure to perform any material term or condition of this Agreement or a Party's breach of any of such Party's representations or warranties (in which event the non-defaulting party may pursue any available remedy, including equitable relief) shall constitute default under this Agreement.

14. Miscellaneous.

(a) Attorneys' Fees. If either party commences any legal action or proceeding to enforce any of the terms of this Agreement (or for damages by reason of an alleged breach hereof), the prevailing party therein shall be entitled to recover from the other, in addition to any other relief granted, its reasonable attorney's fees, costs and expenses incidental to such legal action.

(b) Notices. Any notice under this Agreement shall be in writing and be delivered in person, by U.S. Mail, by private courier, or by facsimile. Notice shall be provided to the following:

District

Taylor Mountain Water and Sewer
District
c/o Robert L. Harris, Holden,
Kidwell, Hahn & Crapo, P.L.L.C.
1000 Riverwalk Dr., Ste. 200
P.O. Box 50130
Idaho Falls, ID 83405

CCHU

Country Club Hills Utilities, Inc.
c/o Michael Groth
570 S. Yellowstone
Idaho Falls, Idaho 83402

District's Representative

Robert L. Harris
Holden, Kidwell, Hahn & Crapo,
P.L.L.C.
1000 Riverwalk Dr., Ste. 200
P.O. Box 50130
Idaho Falls, ID 83405

CCHU's Representative

Steven L. Taggart
Maynes Taggart PLLC
525 Park Avenue, Suite 2E
Idaho Falls, ID 83402

(c) Merger. This Agreement supersedes any and all other written or verbal agreements between the Parties hereto regarding the Water Right. Neither CCHU nor District shall be bound by any understanding, agreement, promise, representation or stipulation, express or implied, not specifically contained herein.

(d) Remedies Cumulative. Upon any breach, any and all rights and remedies which either Party may have under this Agreement or by operation of law or equity, shall be distinct, separate and cumulative and shall not be deemed inconsistent with each other. No such right or remedy, whether exercised by said Party or not, shall be deemed to be in exclusion of

any other right or remedy, any two or more of all such rights and remedies may be exercised at the same time or separately as desired.

(e) Further Documents. The Parties hereby agree that they shall sign such other and further documents as may be required to carry into effect the terms and conditions of this Agreement.

(f) Enforceability. The validity or enforceability of any term, phrase, clause, paragraph, restriction, covenant, agreement or other provision hereof, shall in no way affect the validity or enforcement of the remaining provisions, or any part hereof.

(g) Counterparts. This Agreement may be executed in any number of counterparts for all the convenience of the Parties, all of which, when taken together and after execution by all Parties hereto, shall constitute one and the same Agreement.

(h) Governing Law. This Agreement shall be governed by the laws of the State of Idaho.

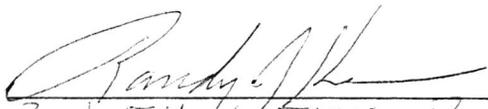
(i) Successors. This Agreement is for the benefit only of the Parties hereto and shall inure to the benefit of and bind their respective heirs, agents, personal representatives, successors and assigns.

(j) Essence of Time. Time is of the essence in this Agreement.

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement effective on the date set forth above.

“DISTRICT”

TAYLOR MOUNTAIN WATER AND SEWER DISTRICT

By: 
RANDY J. KERN, TMWS, President

“CCHU”

COUNTRY CLUB HILLS UTILITIES, INC.

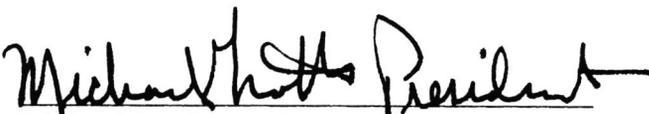
By: 
Michael Groth, President

EXHIBIT 1

PROPERTIES SERVED BY THE CCHU SYSTEM

Holiday Hills Subdivision, Division No. 1

Holiday Hills Subdivision, Division No. 2

Holiday Hills Subdivision, Division No. 5

Holiday Hills, an Idaho Condominium Project

Country Club Hills, Division No. 1

Country Club Hills, First Amended Division No. 2

Country Club Hills, Division No. 3

Idaho Falls Country Club (domestic water only)

1 home located at 1759 E. 113 S., Idaho Falls, ID 83404 (as of the Effective Date, this home is owned by Ron Dickemore)

1 home located at 11645 S. 10th E., Idaho Falls, ID 83402 (as of the Effective Date, this home is owned by Robyn Longhurst)

EXHIBIT 2

PURCHASED ASSETS

1. All books and records of CCHU, including, but not limited to, customer information, account information, accounts receivable and meter reading entries.
2. The following items of real or personal property:
 - a. 2 wells
 - b. Storage tank
 - c. 2 pumps
 - d. Electrical system
 - e. Water & sewer lines to various properties
 - f. Water keys
 - g. Meter reader tool
3. The real property identified in the attached warranty deed.
4. Water Right No. 25-7090.

EXHIBIT 3

EXCLUDED ASSETS

1. Sewage lagoons, lift station and associated real property as described in the attached deed.

EXHIBIT 4

ACCOUNTS RECEIVABLE

1. As contained in the CCHU ledger book given to District at Closing.

EXHIBIT 5

SRBA DECREE FOR WATER RIGHT NO. 25-7090

2005 SEP 30 PM 02:00
DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
FILED _____

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA) PARTIAL DECREE PURSUANT TO
) I.R.C.P. 54(b) FOR
Case No. 39576)
) Water Right 25-07090

NAME AND ADDRESS: COUNTRY CLUB HILLS UTILITIES
C/O MIKE GROTH PRES
570 S YELLOWSTONE HWY
IDAHO FALLS, ID 83402-3907

SOURCE: GROUND WATER

QUANTITY: 1.00 CFS
78.00 AFY

PRIORITY DATE: 04/18/1976

POINT OF DIVERSION: T01N R38E S21 NWSWSE Within Bonneville County
S28 SESWNE

PURPOSE AND PERIOD OF USE: PURPOSE OF USE PERIOD OF USE QUANTITY
Domestic 01-01 TO 12-31 1.00 CFS
78.00 AFY

Domestic use is for 65 homes.

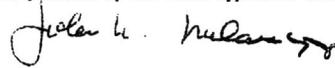
PLACE OF USE: Domestic Within Bonneville County
T01N R38E S21 SESW SWSE
S28 NENE NWNE
SWNE NENW
SESW

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS
NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT
ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY
DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE
ENTRY OF A FINAL UNIFIED DECREE. I.C. SECTION 42-1412(6).

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.



John M. Melanson
Presiding Judge of the
Snake River Basin Adjudication